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Common Carrier Bureau
Network Service Division
Office of the Chief

January 22, 1999

Anna M. Gomez
Chief, Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, NW
Washington, DC 20554

Ex Parte Presentation

Re: *Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity, or in the Alternative, Various Other Relief*, NSD File L-98-121; CC Docket No. 96-98

Dear Ms. Gomez:

In ex parte letters filed on December 30, December 31, 1998, and January 4, 1999, BellSouth, US West (USW) and Bell Atlantic, respectively, ask to be considered for the same relief requested by SBC in its exparte letter of December 22, 1998.

Specifically, SBC declared that it will "accept" a compromise resolution in its responsibility to implement interstate intraLATA dialing parity in the SBC states. SBC proposed that it would implement interstate intraLATA dialing parity under one of three conditions:

1. Coincident with a state order to implement intrastate intraLATA dialing parity if ordered prior to March 31, 2000;
2. Where no such order exists, SBC LECs' will implement interstate intraLATA dialing parity no later than March 31, 2000;
3. SBC will not seek any further waivers from the Commission to delay interstate intraLATA dialing parity competition.

In my letter to you dated January 12, 1999, MCI Worldcom, Inc (MCI Worldcom) explained that we oppose any compromise with SBC on intraLATA dialing parity because SBC failed to show good cause behind its arbitrary implementation date of March 31, 2000 and, in any event, the Commission cannot waive implementation of the requirements of Section 251(b)(3) of the Act.¹ We also notified the Common Carrier Bureau of possible violations of the Commission's ex parte rules by SBC.

¹ Section 251(b)(3) of the Act requires ALL LECs to provide local and toll dialing parity.

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Within days of SBC's December 22 letter, three RBOCs, BellSouth, Bell Atlantic and USWest filed separate, yet remarkably similar ex parte letters asking the Commission for the same relief. Bell Atlantic and USWest also "will agree" to the three condition put forth by SBC. BellSouth on the other hand will only "agree" to the first two of SBC conditions while stating that it will "not waive its right to advocate in state jurisdictions that its obligation to provide toll dialing parity is appropriate only when it is coincident with BST's entry into the interLATA market."²

Once again MCI Worldcom objects to the Commission granting any relief from the requirements of Section 251(b)(3) of the Act. Once again, it appears that these Regional Bell Operating Companies (BOCs) summarized a discussion or meeting that took place with Commission staff. Yet, neither letter provides a summary of these meetings, who was in attendance and what was discussed. Not only may there be a possible violation of the Commission's own ex parte rules, but all three carriers fail, just like SBC, to demonstrate "good cause" for a waiver of the Commission rules.³ Not one of these three BOC provides "special circumstances" that warrant Commission consideration. In addition, these BOCs fail to justify the Commission's authority to waive the requirements of the Act.

The requests from Bell Atlantic are a transparent attempt to skirt its obligation to comply with Section 251(b)(3) of the Act. For instance, Bell Atlantic⁴ already provides intrastate intraLATA toll dialing parity in eight of its eleven states (Delaware, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and West Virginia) and has been order to provide intrastate intraLATA dialing parity in Massachusetts on February 8, 1999. The Maryland and Virginia Commissions are still considering orders to implement intrastate intraLATA dialing parity.⁵ AT&T has already filed in Federal District Court in Virginia against Bell Atlantic. AT&T claims and correctly so, that Bell Atlantic is in violation of Section 251(b)(3) of the Act. Should the Commission grant this so-called relief, competition in one of the nation's largest interstate intraLATA toll dialing parity markets, the Maryland-Virginia suburbs, will be put on hold. This is quite contrary to the Commission's own goals to open markets across this country.⁶

² See, Letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Cynthia Cox, Executive Director, Federal and State Relations, BellSouth, dated December 30, 1998.

³ These BOCs must demonstrate that there is "good cause" for a waiver of Commission rules. 47 C.F.R. 1.3. In making such a demonstration, these carriers face a "high hurdle" and must demonstrate that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, Order, CC Docket No. 96-98, DA 97-675, rel. Apr. 4, 1997, at ¶ 14, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972); See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ Bell Atlantic provide service in portion of CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT and WV.

⁵ IntraLATA toll dialing parity does not apply to the District of Columbia.

⁶ "This decision confirms the logic of the Telcom Act: that competition breeds competition. The companies should stop litigating and give Americans what they want, choice." See, Statement Of FCC Chairman William E. Kennard On Supreme Court's Denial Of Cert In Fifth Circuit Bill Of Attainder Case, January 19, 1999.

Similarly, BellSouth has already implemented intrastate intraLATA dialing parity in Florida, Georgia and Kentucky and is ordered to provide dialing parity by February 1999 in Louisiana, Mississippi and North Carolina. Leaving only two states in BellSouth's nine-state territory where the State Commissions are still considering petitions filed by the interested parties (Tennessee and South Carolina). Therefore, BellSouth's proposal would, technically only apply to Tennessee and South Carolina. BellSouth's so-called compromise does nothing to advance open toll markets in their region since BellSouth also claimed in its letter that it would not "waive its right" to continue to advocate that it does not have to provide intraLATA toll dialing parity. BellSouth is basically saying that it will not agree to the arbitrary date of March 31, 2000 for Tennessee and South Carolina. Instead, BellSouth will use a Commission decision in their favor to assist in their state advocacy. The Commission simply cannot let this happen. Instead, the Commission should determine and clearly state that BellSouth, along with SBC, Bell Atlantic and USWest must implement interstate intraLATA toll dialing parity in their entire regions, not only in the states where they've already implemented intrastate intraLATA toll dialing parity. This is what the Act and existing Commission rules require.

Lastly, USWest already provides intrastate intraLATA dialing parity in five of its fourteen states: Arizona, Minnesota, New Mexico, Utah and Wyoming ; while the PUCs in eight of USWest's remaining states (Colorado, Iowa, Montana, North Dakota, Nebraska, Oregon and Washington) have ordered USWest to provide intrastate intraLATA dialing parity.⁷ In Idaho, USWest has been ordered to file an implementation plan by June 1, 1999. What possible reason could USWest have to request this relief from the Commission when all the states in its territory have required USWest to provide intrastate intraLATA dialing parity? Its obvious that USWest seeks to use the Commission as a pawn to influence the State Commission decisions in North Dakota, and Idaho regarding implementation dates.⁸

⁷ All but North Dakota have ordered USWest to begin offering intrastate intraLATA dialing parity by February 8, 1999. North Dakotans will be given a choice in July 1999. Lastly, South Dakota state telecommunications law does not allow the state PUC to order USW to provide intrastate intraLATA until USW is authorized to provide intrastate interLATA dialing parity.

⁸ Both North Dakota and Idaho have interstate intraLATA toll areas. North Dakota interstate intraLATA areas extend in to Minnesota, Montana and South Dakota. Idaho interstate intraLATA toll areas extend into Washington, Montana, Oregon and Nevada.

